Mohanaraj a/l Muniandy v Pengarah Jabatan Perkhidmatan Haiwan & Anor

HIGH COURT (PULAU PINANG) — CIVIL SUIT NO 22–80 OF 1998
KAMALANATHAN RATNAM J
24 JULY 2002

Public Servants *— Dismissal — Procedure — Whether the appropriate disciplinary authority needs to state grounds of findings — Whether findings of the appropriate disciplinary authority ought to be given to the plaintiff — Whether the Public Services Commission ought to have first made a finding of guilt before proceeding to impose the appropriate punishment — Whether the failure to record a finding of guilt meant that the entire decision making process was flawed — Public Officers (Conduct & Discipline) Regulations 1993 reg 28(1)*

The plaintiff was dismissed from his position as assistant veterinarian officer with the first defendant. The relevant events leading thereto were as follows. By way of a letter ('the show cause letter'), the plaintiff was informed that the Public Services Commission had decided to take disciplinary action against the plaintiff pursuant to reg 28(1) of the Public Officers (Conduct and Discipline) Regulations 1993 ('the Regulations') with a view of either dismissing him from service or reducing him in rank. The show cause letter listed two charges based on which the disciplinary action was taken against the plaintiff. The facts leading to the two charges were also stated. In accordance with the reg 28(1) of the Regulations, the plaintiff made his written representations. Subsequently, the Public Services Commission wrote to the plaintiff informing him that a decision was taken to dismiss him forthwith ('the dismissal letter'). Being dissatisfied, the plaintiff instituted this action seeking, inter alia, a declaration that his dismissal was wrongful. Four issues arose for the determination of the court. First, the plaintiff contended that he was not supplied with the proposed grounds on which he was dismissed. It was not disputed that this case involved more than one tier of disciplinary authority. In the instant case, the appropriate disciplinary authority — the Chairman of the Lembaga Tatatertib Perkhidmatan Awam Kumpulan Sokongan, Jabatan Perkhidmatan Haiwan Negeri Pulau Pinang — had referred this matter to the Public Services Commission. The plaintiff argued that the findings of the chairman of the appropriate disciplinary authority ought to have been given to him but it was not. The second issue raised by the plaintiff was that the dismissal letter, contrary to the Regulations, was not signed by the Secretary to the Public Services Commission. The third issue taken by the plaintiff was that the dismissal letter, unlike the show cause letter, stated that only the punishment of dismissal had been considered. No reference was made to the possible punishment of reduction in rank. The plaintiff contended that since the lesser of the two punishments was not even considered by the Public Services Commission, there was a flaw in the decision making process. The final issue raised by the plaintiff was that the Public Services Commission ought to have first

made a finding of guilt before proceeding to impose the appropriate punishment. It was contended that the failure to do so vitiated the dismissal of the plaintiff.

Held, allowing the plaintiff's claim:

(1) There is no requirement in the Regulations for the chairman of the appropriate disciplinary authority to state his grounds or findings when referring the matter to the Public Services Commission. So long as the chairman finds that the breach of discipline complained of is of a nature which merits a punishment of dismissal or reduction in rank, he will refer the case to the Public Services Commission (see p 566A–C).

(2) The plaintiff had been supplied with sufficient particulars, facts and grounds which were all contained in the two charges. In fact, based on these facts the plaintiff had made a written representation. He could not have done so if he was not satisfied with the facts and grounds available to him at that time (see p 567C).

(3) The dismissal letter merely conveyed the directive of the Public Services Commission. Once a decision had been made, the conveyance of such a decision by way of a letter signed by anyone signing on behalf of the Secretary could not invalidate the decision making process of the Public Services Commission (see p 568A–B).

(4) Since there was no requirement for the Public Services Commission to give any reasons, it is all the more incumbent upon the Public Services Commission to have expressed in no uncertain terms and in clear precise language that it had considered both punishments and that the facts demanded the punishment of dismissal and none other. By its dismissal letter, the Public Services Commission had failed to state if it had also considered the lesser alternative punishment and this amounted to a failure in the decision making process (see pp 569G–H, 570B–C). The failure to record a finding of guilt does not mean that the entire decision making process is flawed (see p 571A–B).

[Bahasa Malaysia summary

Plaintif telah dipecat daripada kedudukan beliau sebagai pegawai pembantu veterinar dengan defendan pertama. Peristiwa-peristiwa relevan yang membawa kepadanya adalah seperti berikut. Melalui sepucuk surat ('surat tunjuk sebab tersebut'), plaintif telah diberitahu bahawa Suruhanjaya Perkhidmatan Awam telah membuat keputusan untuk mengambil tindakan tatatertib terhadap plaintif selaras dengan perkara 28(1) Peraturan-Peraturan Pegawai Awam (Perlakuan dan Tatatertib) 1993 ('Peraturan-Peraturan tersebut') dengan pandangan untuk sama ada memecat beliau daripada perkhidmatan ataupun menurunkan pangkat beliau. Surat tunjuk sebab tersebut telah

menyenaraikan dua pertuduhan berdasarkan yang mana tindakan tatatertib telah diambil terhadap plaintif. Fakta-fakta yang membawa kepada kedua-dua pertuduhan tersebut telah juga dinyatakan. Berhubung perkara 28(1) Peraturan-Peraturan tersebut, plaintif telah membuat representasi bertulis beliau. Kemudiannya, Suruhanjaya Perkhidmatan Awam telah menulis kepada plaintif memaklumkan beliau bahawa keputusan telah diambil untuk memecat beliau dengan segera ('surat pemecatan tersebut'). Berasa tidak puashati, plaintif telah memulakan tindakan ini bagi memohon, antara lainnya, satu pengisytiharan bahawa pemecatan beliau adalah salah. Empat isu berbangkit untuk ditentukan oleh mahkamah. Pertama, plaintif menegaskan bahawa beliau tidak diberikan alasan-alasan yang dicadangkan di atas yang mana beliau telah diberhentikan. Adalah tidak dipertikaikan bahawa kes ini melibatkan lebih daripada satu tingkatan pihak berkuasa tatatertib. Dalam kes semasa, pihak berkuasa tatatertib yang wajar — Pengerusi Lembaga Tatatertib Perkhidmatan Awam Kumpulan Sokongan, Jabatan Perkhidmatan Haiwan Negeri Pulau Pinang — telah merujuk perkara ini kepada Suruhanjaya Perkhidmatan Awam. Plaintif berhujah bahawa keputusan pengerusi pihak berkuasa tatatertib yang wajar sepatutnya telah diberikan kepada beliau tetapi ianya telah tidak dilakukan. Isu kedua yang dibangkitkan oleh plaintif adalah bahawa surat pemberhentian, bertentangan dengan Peraturan-Peraturan, telah tidak ditandatangani oleh setiausaha kepada Suruhanjaya Perkhidmatan Awam. Isu ketiga yang dikemukakan oleh plaintif adalah bahawa surat pemberhentian tersebut, tidak seperti surat tunjuk sebab, menyatakan bahawa hanya hukuman pemecatan telah dipertimbangkan. Tiada rujukan dibuat kepada kemungkinan hukuman penurunan pangkat. Plaintif menegaskan bahawa oleh kerana hukuman yang kurang daripada kedua-dua hukuman tersebut telah tidak dipertimbangkan oleh Suruhanjaya Perkhidmatan Awam, maka terdapat kecacatan di dalam proses membuat keputusan tersebut. Isu akhir yang dibangkitkan oleh plaintif adalah bahawa Suruhanjaya Perkhidmatan Awam haruslah pertamanya membuat keputusan bersalah sebelum terus mengenakan hukuman yang berpatutan. Adalah ditegaskan bahawa kegagalan untuk melakukan sedemikian telah merosakkan pemecatan plaintif.

Diputuskan, membenarkan tuntutan plaintif:

(1) Tidak terdapat syarat di dalam Peraturan-Peraturan tersebut untuk pengerusi pihak berkuasa tatatertib yang berpatutan menyatakan alasan-alasannya atau keputusannya ketika merujuk perkara tersebut kepada Suruhanjaya Perkhidmatan Awam. Asalkan pengerusi mendapati bahawa keingkaran tatatertib yang diadukan adalah yang mempunyai sifat yang mewajarkan satu hukuman pemecatan atau penurunan pangkat, beliau akan merujukkan kes tersebut kepada Suruhanjaya Perkhidmatan Awam (lihat ms 566A–C).

(2) Plaintif telah diberikan butir-butir yang mencukupi, fakta-fakta dan alasan-alasan yang mana kesemuanya terkandung di dalam kedua-dua pertuduhan tersebut. Malahan, berdasarkan fakta-fakta ini, plaintif telah membuat representatsi bertulis. Beliau tidak mungkin boleh melakukan sedemikian jika beliau tidak berpuashati dengan fakta-fakta dan alasan-alasan yang tersedia ada untuk beliau pada waktu itu (lihat ms 567C).

(3) Surat pemecatan itu hanya menyampaikan arahan Suruhanjaya Perkhidmatan Awam. Sebaik sahaja sesuatu keputusan telah dibuat, penyampaian keputusan yang sedemikian melalui surat yang telah ditandatangani oleh sesiapa bagi pihak Setiausaha tidak akan menidakkan kesahihan proses membuat keputusan oleh Suruhanjaya Perkhidmatan Awam (lihat ms 568A–B).

(4) Oleh kerana tidak terdapat syarat untuk Suruhanjaya Perkhidmatan Awam memberikan sebarang alasan, ianya adalah lebih penting lagi ke atas Suruhanjaya Perkhidmatan Awam untuk menyatakan dengan terma-terma yang nyata dan dalam bahasa yang tepat dan jelas bahawa ianya telah mempertimbangkan kedua-dua hukuman tersebut dan bahawa fakta-fakta tersebut menuntut hukuman pemecatan dan tiada yang lain. Melalui surat pemecatannya, Suruhanjaya Perkhidmatan Awam telah gagal untuk menyatakan bahawa ianya telah juga mempertimbangkan hukuman alternatif yang kurang dan ini telah menyebabkan kegagalan dalam proses membuat keputusan tersebut (lihat ms 569G–H, 570B–C). Kegagalan untuk mencatatkan keputusan bersalah tidak bermakna bahawa keseluruhan proses pembuatan keputusan itu adalah tidak sempurna (lihat ms 571A–B).]

Notes

For cases on dismissal of public servants, see 10 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1525–1563.

Cases referred to

Ang Seng Wan v Suruhanjaya Polis Di-Raja Malaysia & Anor [2002] 2 MLJ 131 (refd)

Minister of Human Resources & Ors v National Union of Hotel, Bar and Restaurant Workers, Semenanjung Malaysia and another appeal [1997] 3 MLJ 377 (refd)

Persatuan Pegawai-Pegawai Bank Semenanjung Malaysia v Minister of Labour Malaysia & Ors [1989] 1 MLJ 30 (refd)

Selvaraju a/l Ponniah v Suruhanjaya Perkhidmatan Awam, Malaysia & Anor [1999] 5 MLJ 678 (refd)

Legislation referred to

Public Officers (Conduct and Disciplinary) (ChapterD) General Orders 1980 reg 26(11)

Public Officers (Conduct and Discipline) Regulations 1993 regs 4(2)(a), (d), (g), (i), 26(2), 28(1), 53(1)(2) A

MM Athimulan (*Norrizan bte Ahmad* with him) (*Athimulan & Co*) for the plaintiff.

Ahmad Kamar (State Legal Adviser) for the first defendant.

Mazni bte Buang (Senior Federal Counsel) for the second defendant. B

Kamalanathan Ratnam J: The plaintiff was at all material times, the Penolong Pegawai Veterinar attached to the Jabatan Perkhidmatan Haiwan Negeri Pulau Pinang ('the first defendant'). The Public Services Commission ('the disciplinary authority') was at all material times the disciplinary authority of the plaintiff and was acting as the servant and/or agent of the second defendant. By a letter dated 20 October 1994, the plaintiff was informed by the Secretary of the Public Services Commission that pursuant to reg 28 of the Public Officers (Conduct and Discipline) Regulations 1993 ('the Regulations'), the disciplinary authority had decided to take disciplinary action against the plaintiff with a view to his dismissal from service or reduction in rank. The plaintiff then duly made his representations by his letter dated 19 November 1994. By its letter dated 10 February 1995, the disciplinary authority informed the plaintiff that at its meeting No 1802 held on 16 January 1995, where the plaintiff's case was considered in its entirety, the Public Services Commission, had decided to dismiss him forthwith. The Public Services Commission by a letter dated 20 April 1995 informed the plaintiff through the state secretary and the head of his department that the decision of the Public Services Commission was final and no appeal lay or arose in his case. C D E

Case for the plaintiff F

The plaintiff prayed for:

(i) a declaration that his dismissal from the Jabatan Perkhidmatan Haiwan Negeri Pulau Pinang was wrongful and that he be declared as still being a Penolong Pegawai Veterinar with a right to claim for all wages and entitlements due to him since his termination; G

(ii) an enquiry to be held to determine his special salary and other entitlements related to his job;

(iii) damages; and

(iv) costs. H

Findings of the court

By consent, parties agreed that there were four issues for determination by the court:

(i) whether the disciplinary authority had strictly complied with reg 28(1) of the Regulations in issuing the show cause letter dated 20 October 1994; I

(ii) whether the letter dated 10 February 1995 informing the plaintiff that he was dismissed from service is void and of no effect as it was signed by a wrong person, unauthorized by the Regulations;

(iii) the disciplinary authority intended or contemplated the punishment of dismissal or reduction in rank which are distinct in nature but the decision making process shows that the disciplinary authority's contemplation was with regard to punishment by way of dismissal only; and

(iv) the disciplinary authority did not give reasons or grounds for its decision to dismiss the plaintiff, thereby infringing the rules of natural justice and the decision making process in relation to the plaintiff's dismissal.

First issue

In respect of this issue, Mr Athimulan for the plaintiff submitted that the defendant had failed to comply with reg 28(1) of the Regulations. It is therefore necessary to reproduce this regulation which reads as follows:

> The appropriate disciplinary authority sitting to consider a case where the breach of discipline complained of has been found to be of a nature which merits a punishment of dismissal or reduction in rank shall consider all the available information and where it appears that there is a prima fade case against the officer for dismissal or reduction in rank, the appropriate disciplinary authority shall direct that a statement containing the facts of the breach of discipline alleged to have been committed by the officer and any proposed ground on which the officer is to be dismissed or reduced in rank be sent to the officer and shall call upon him to make a written representation, containing grounds upon which he relies to exculpate himself, within a period of not less than twenty-one days from the date of receipt of the charge.

The plaintiff contends that:

(a) there has been no finding of a prima facie case against him to warrant his dismissal or reduction in rank; and

(b) no proposed grounds on which he was dismissed were supplied to him.

It is necessary to reproduce the show cause letter dated 20 October 1994 which reads as follows:

> SURUHANJAYA PERKHIDMATAN AWAM MALAYSIA
> TINGKAT 16-19 ,WISMA KWSG,
> JALAN KAMPUNG ATTAP,
> 50520 KUALA LUMPUR.
>
> Ruj Kami:SPA.SULIT.226107/3/(16)
> Tarikh: 20 Oktober 1994
>
> Dr M Mohanaraj a/l K Muniandy
>
> Melalui
> DAN
> Salinan:

YB Setiausaha Kerajaan Negeri
Pulau Pinang
Paras 25,
Kompleks Tun Abdul Razak (KOMTAR)
10503 PULAU PINANG

(UP: YB Dato' Mohamad Noor bin Abdul Rahim)

Tuan,

Kenyataan Alasan-alasan Buang Kerja Atau Turun Pangkat

Saya diarah memaklumkan bahawa dengan laporan yang diterima, maka Suruhanjaya Perkhidmatan Awam sebagai Pihak Berkuasa Tatatertib Yang Berkenaan telah membuat keputusan untuk mengambil tindakan tatatertib dengan tujuan buang kerja atau turun pangkat terhadap tuan di bawah peraturan am 28 Peraturan-peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993 atas pertuduhan berikut:

Pertuduhan Pertama

Bahawa tuan, Dr M Mohanaraj a/l K Muniandy yang bertugas sebagai Penolong Pegawai Veterinar Gred G6, Jabatan Perkhidmatan Haiwan Negeri Pulau Pinang pada 7 April 1993 jam 10.10 pagi didapati sedang minum keras dan berada dalam keadaan mabuk disebuah kedai beralamat No 45, Jalan lrving, Pulau Pinang walhal tuan sepatutnya berada di pejabat menjalankan tugas tuan pada tarikh dan waktu yang sama. Perbuatan tuan itu yang membelakangkan tugas awam demi kepentingan persendirian berkelakuan dengan sedemikian cara hingga memburukkan nama atau mencemarkan nama perkhidmatan awam dan tidak bertanggungjawab adalah bertentangan dengan Peraturan 4(2)(a), 4(2)(d) dan 4(2)(g) Peraturan-Peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993.'

Pertuduhan Kedua

'Bahawa tuan, Dr M Mohanaraj a/l K Muniandy, yang bertugas sebagai Penolong Pegawai Gred G6, Jabatan Perkhidmatan Haiwan Negeri Pulau Pinang telah tidak hadir bertugas tanpa cuti atau tanpa mendapat kebenaran terlebih dahulu atau tanpa sebab yang munasabah pada 1 April 1993 hingga 7 April 1993. Dengan meninggalkan jawatan tuan itu tanpa cuti atau tanpa mendapat kebenaran terlebih dahulu atau tanpa sebab yang munasabah tuan telah melakukan kesalahan yang boleh diertikan sebagai tidak bertanggungjawab dan ingkar perintah atau berkelakuan dengan apa-apa cara yang boleh ditatsirkan dengan munasabah sebagai ingkar perintah iaitu bertentangan dengan peraturan am-peraturan am 4(2)(g) dan 2(2)(i) Peraturan-Peraturan Pegawal Awam (Kelakuan dan Tatatertib) 1993.

2 Mengikut kehendak Perintah AM 28(1) Peraturan-peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993, tuan adalah diminta mengemukakan representasi secara bertulis yang mengandungi alasan-alasan untuk membebaskan diri tuan daripada diambil tindakan tatatertib buang kerja atau turun pangkat.

3 Representasi alasan-alasan pembelaan diri tuan hendaklah dikemukakan kepada Setiausaha Suruhanjaya Perkhidmatan Awam melalui Ketua Jabatan tuan dalam tempoh dua puluh satu (21) hari daripada tarikh penerimaan surat ini. Sekiranya tuan tidak memberi sebarang jawapan dalam tempoh masa yang dinyatakan itu, tuan adalah dianggap sebagai tidak hendak mengemukakan sebarang pembelaan diri dan perkara ini akan diputuskan atas keterangan-keterangan yang ada sekarang ini sahaja.

A 4 Sila tuan akui penerimaan surat ini.

BERKHIDMATAN UNTUK NEGARA

Saya yang menurut perintah,

tt

(ABDUL RAHMAN BIN HAJI AHMAD)

B Setiausaha,

Suruhanjaya Perkhidmatan Awam,

Malaysia.

The plaintiff argued that the said letter contains no statement that there is C a prima facie case against him to warrant a dismissal or reduction in rank. In a case where there is more than one tier of disciplinary authority, like in this case, reg 26(2) of the Regulations will come into play. It reads as follows:

> D Where the Chairman of the appropriate Disciplinary Authority (in the case where there is more than one tier of Disciplinary Authority) finds that the breach of discipline complained of is of a nature which merits a punishment of dismissal or reduction in rank, the chairman of the appropriate Disciplinary Authority shall refer the case to a Disciplinary Authority that has the power to impose a punishment of dismissal or reduction in rank.

In this case, having considered that the breach of discipline complained of E merits either dismissal or reduction in rank, the Chairman of the Lembaga Tatatertib Perkhidmatan Awam Kumpulan Sokongan, Jabatan Perkhidmatan Haiwan Negeri, Pulau Pinang then referred this matter pursuant to reg 28 of the Regulations to the Public Services Commission. It was the case of the plaintiff that had he been alerted to the prima facie F findings made out against him he would have been prepared in every possible way, to challenge such findings.

Mr Athimulan then goes on to argue that no statement of facts was given to his client except for the two charges contained in the notice to show cause dated 20 October 1994. It is his case that the findings of the chairman of the Jabatan Perkhidmatan Haiwan Negeri, Pulau Pinang which would G have given the Public Services Commission a basis for determining that a prima facie case had been made out, in addition to considering all the available information, ought to have been given to his client. His plea is that his client neither had the facts nor the grounds on which the Public Services Commission had established a prima facie case against his client.

H In response, Cik Mazni Buang for the second defendant argued that the show cause letter dated 20 October 1994 contained all the facts and grounds necessary to arrive at a conclusion that a prima facie case had been established against the plaintiff. She referred the court to the facts as stated in the two charges. In respect of the first charge, the facts were that on 7 April 1993 at about 10.10am, he was found drinking alcohol and being in I a state of intoxication at shop No 45 Jalan Irving, Pulau Pinang whereas at that material time he ought to have been at his office attending to his duties. The rest of the charge represented the grounds.

In respect of the second charge the facts were that between 1 April 1993 to 7 April 1993 the plaintiff had absented himself from work without leave or without permission or without reasonable cause or excuse. The rest of the charge represented the grounds.

I have considered the submissions of both parties on this issue. There is no requirement in the Regulations for the chairman of the appropriate disciplinary authority and in this case, the Chairman of the Lembaga Tatatertib Perkhidmatan Awam, Kumpulan Sokongan, Jabatan Perkhidmatan Haiwan, Negeri Pulau Pinang, to state his grounds or findings whilst referring the matter to the Public Services Commission. So long as the Chairman finds that the breach of discipline complained of is of a nature which merits a punishment of dismissal or reduction in rank, he will refer the case to the Public Services Commission.

In *Selvaraju a/l Ponniah v Suruhanjaya Perkhidmatan Awam, Malaysia & Anor* [1999] 5 MLJ 678, I held that in so far as the giving of reasons is concerned, so long as the General Orders do not require the departments to provide reasons, there is no requirement for them to do so. In arriving at this conclusion I was guided by the decision of the Court of Appeal in *Minister of Human Resources & Ors v National Union of Hotel, Bar and Restaurant Workers, Semenanjung Malaysia and another appeal* [1997] 3 MLJ 377. In any case, I am satisfied that both the charges contain sufficient facts. The grounds on which he was charged in respect of the first charge were that by being found in a shop drinking alcohol and in a state of intoxication whilst he ought to have been at his place of work and attending to his work, he had put his personal interest before his duty and in so doing had spoilt the name and given a bad image of the public services and by so doing he had breached reg 4(2)(a),(d) and (g) of the Regulations. The said rules are reproduced for ease of reference:

> 4(2) An officer shall not —
>
> (a) subordinate his public duty to his private interests;
> (b) ...
> (c) ...
> (d) conduct himself in such manner as to bring the public service into disrepute or to bring discredit thereto;
> (e) ...
> (f) ...
> (g) be irresponsible.

In respect of the second charge, the grounds on which he was charged were that by absenting himself from work without leave or permission or without reasonable cause or excuse between 1–7 April 1993, he had acted irresponsibly and that such conduct could be reasonably assessed as not wanting to follow orders and he thereby had breached reg 4(2)(g) and (i) of the Regulations.

Regulation 4(2)(g) and (i) read as follows:

> (i) An officer shall not —

A (a) ...
(b) ...
(c) ...
(d) ...
(e) ...
(f) ...
B (g) be irresponsible;
(h) ...
(i) be insubordinate or conduct himself in any manner which can reasonably be construed as being insubordinate

To my mind, the complaint of the plaintiff on this score is unacceptable.
C The plaintiff had been supplied with sufficient particulars, facts and grounds which were all contained in the two charges. In fact, based on these facts the plaintiff must have made a written representation. He could not have done so if he was not satisfied with the facts and grounds available to him at that time.

D *Second issue*

The second issue raised by the plaintiff was that the letter dated 10 February 1995 dismissing the plaintiff was not signed by the secretary to the Public Services Commission but instead it was signed on his behalf by one Mohd
E Nor bin Hj Mohd Yassin. Counsel relied on reg 53(1) and (2) of the Regulations which reads as follows:

(1) Letters and other correspondence between the appropriate disciplinary authority and the officer who is subject to disciplinary action shall be signed by the chairman of the appropriate disciplinary
F authority or by any member of the disciplinary authority on behalf of the chairman.

(2) Notwithstanding the provisions of sub-reg (1), where the disciplinary authority is a service commission established under Part X of the Federal Constitution, letters and other correspondence required to be signed may be signed by the secretary of the service commission
G concerned. Since there was no evidence which led to show if the said Mohd Nor bin Hj Mohd Yassin was a member of the disciplinary authority, the plaintiff sought to invoke reg 53(1). The plaintiff also argued that by virtue of reg 53(2) only the secretary could sign the letter of dismissal.

H In response, Cik Mazni argued that since the Public Services Commission is a disciplinary authority established under Part X of the Federal Constitution, reg 53(2) of the Regulations applied in this case.

As to whether the signatory ought to have been the secretary himself, counsel argued that the regulation was merely directional and not
I mandatory. In the circumstances, it was her case that anyone could sign on behalf of the secretary.

I accept the submission that the dismissal letter merely conveyed the

directive of the Public Services Commission. In other words, the signatory be he the secretary or anyone signing on his behalf merely conveyed the decision of the Public Services Commission made pursuant to reg 28 of the Regulations. I therefore hold that once a decision had been made, the conveyance of such a decision by way of a letter signed by anyone signing on behalf of the secretary could not invalidate the decision making process of the Public Services Commission.

Third issue

On this score, counsel for the plaintiff pointed out that whilst the show cause letter dated 20 October 1994 considered both dismissal and reduction in rank, the letter of dismissal showed that only the issue of dismissal had been considered. It is therefore necessary to reproduce the letter of dismissal which reads as follows:

> SURUHANJAYA PERKHIDMATAN AWAM, MALAYSIA
> TINGKAT 16-19, WISMA KWSG,
> JALAN KAMPUNG ATTAP,
> 50520 KUALA LUMPUR.
>
> Ruj Kami: SPA SULIT 226L07/3/(25)
> Tarikh: 10hb Februari 1995
>
> Dr M Mohanaraj a/l K Muniandy
>
> Melalui
> dan
> Salinan
>
> YB Setiausaha Kerajaan Negeri
> Pulau Pinang,
> Paras 25,
> Kompleks Tun Abdul Razak (KOMTAR)
> 10503 PULAU PINANG
>
> Tuan,
>
> Keputusan Tatatertib Suruhanjaya Perkhidmatan Awam
>
> Saya diarah merujuk kepada surat Suruhanjaya ini SPA SULIT 226107/3 bertarikh 20 Oktober 1994 meminta tuan mengemukakan representasi secara bertulis yang mengandungi alasan-alasan yang tuan hendak gunakan untuk membebaskan diri tuan daripada tindakan tatatertib dengan tujuan buang kerja di bawah Peraturan 28, Paraturan-peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993. Tuan telah mengemukakan representasi tersebut melalui surat-tuan bertarikh 19 November 1994.
>
> Suruhanjaya Perkhidmatan Awam dalam mesyuaratnya yang ke-1802 pada 16 Januari 1995 setelah menimbangkan dengan teliti kes tuan itu pada keseluruhannya telah memutuskan bahawa tuan dikenakan hukuman buang kerja berkuatkuasa dengan serta-merta iaitu mulai 17 Januari 1995.
>
> BERKHIDMAT UNTUK NEGARA
>
> Saya yang menurut perintah,
>
> tt
> (MOHD NOR BIN HAJI MOHD YASSIN)
> b/p Setiausaha,

A Suruhanjaya Perkhidmatan Awam, Malaysia.

The plaintiff argued that since the lesser of the two punishments was not even considered by the Pubic Services Commission, this clearly constituted a flaw in the decision making process. Regulation 28(12) of the Regulations B reads as follows:

> If, after considering the representation under subregulation (1) and, where a Committee of Investigation is appointed, the report of such Committee, the appropriate Disciplinary Authority finds —
>
> (a) that the officer is guilty of misconduct and should be dismised or reduced in rank, the Disciplinary Authority shall forthwith impose the C appropriate punishment;
>
> (b) that the officer is guilty of misconduct but such misconduct does not merit dismissal or reduction in rank but merits a lesser punishment, the Disciplinary Authority shall impose on the officer such lesser punishment as it deems fit and proper; or
>
> D (c) that the officer is not guilty of misconduct, the Disciplinary Authority shall acquit him

Relying on sub-reg (12), the plaintif argued that the deliberation of the commission must be made and shown to have been made after having considered both the issues of dismissal and reduction in rank.

E In response, Cik Mazni argued that by para 2 of the said letter of termination it was clear that the commission had considered the case in its entirety and had arrived at the decision to dismiss him.

Having considered the submission of both parties on this issue, I find that the letter of dismissal in no uncertain terms had only one aim that is to consider his dismissal (dengan tujuan buang kerja). With such a fixed view F it cannot be denied that the issue of reduction in rank was never considered. Whilst the show cause letter had indicated that there were two possible punishments that the plaintiff could face, the decision of the commission was clearly centred only on dismissal.

The submission of the defence that the entire case had been taken into G consideration and that this included the consideration of reduction in rank, cannot be accepted. The entire case had no doubt been considered but it would seem from a reading of the letter of dismissal, that the entire case had been considered only in respect of dismissal.

Since there is no requirement for the commission to give any reasons all H the more it is incumbent upon the commission to have expressed in no uncertain terms and in clear precise language that it had considered both punishments and that the facts demanded the punishment of dismissal and none other.

In *Persatuan Pegawai-Pegawai Bank Semenanjung Malaysia v Minister of Labour Malaysia & Ors* [1989] 1 MLJ 30, the then Supreme Court held that I where all matters required by the law to be taken into consideration had in fact not been taken into consideration by the Minister, the decision of the Minister on appeal in confirming the registration of an association as a trade

union, was held to be a nullity.

Professor MP Jain in his *Administrative Law of Malaysia and Singapore* (3rd Ed), says at p 455 as follows:

> Discretion should not be guided by irrelevant considerations, ie the considerations lying outside the scope of the statute concerned. Conversely, a decisionmaker while exercising his discretionary power ought to take into account relevant considerations. If he does not take into account, or ignores, considerations which are relevant to the purpose of the statute in question, then again its act or decision will be invalid.

Whilst the plaintiff had made his representation, the commission by its letter of dismissal had failed to state if it had also considered the lesser alternative punishment. Herein lies the failure in the decision making process. On this ground the plaintiff must succeed.

Fourth issue

On this issue, it is the plaintiff's submission that whilst under reg 28(12)(a) of the Regulations there is a requirement of the commission to first find the officer guilty and then to impose the appropriate sentence and under reg 28(12)(c) of the Regulations, even an order of acquittal, it is therefore necessary for the Commission to state its reasons.

Counsel then referred to the old general order 26(11) of the Public Officers (Conduct and Disciplinary) (Chapter D) General Orders 1980 which reads as follows:

> If, upon considering the report of the Committee the Appropriate Authority is of the opinion —
>
> (a) that the officer should be dismissed or reduced in rank, it shall forthwith direct accordingly;
>
> (b) that the officer does not deserve to be dismissed or reduced in rank, but deserves some lesser punishment as it may deem fit; or
>
> (c) that the proceedings disclose sufficient grounds for requiring him to retire in the public interest, it shall recommend to the government accordingly. The question of pension will be dealt with under the Pensions Act.

The old regulations are now no longer in force.

Referring to a recent decision of the Court of Appeal in *Ang Seng Wan v Suruhanjaya Polis Di-Raja Malaysia & Anor* [2002] 2 MLJ 131, the plaintiff pointed out that there was no specific finding of guilt against him as was required to be made, pursuant to the decision in *Ang Seng Wan.*

Relating this case to the new regulations, counsel submitted that whilst in the old regulation there was no requirement to make a finding of guilt, all the more was it necessary to do so under the new regulation.

I am of the view that the decision in *Ang Seng Wan* was not centered on the non-finding of guilt against Ang, but that there was in the opinion of the Court of Appeal 'no evidence whatsoever to rebut or contradict the exculpatory statement of Ang'. The Court of Appeal went on to hold that it was open to the Commission to have held an oral hearing or enquiry which

A could have contradicted the exculpatory statement of Ang. In the circumstances, Ang's exculpatory statement remained unchallenged. But that is not the case here. Since the Court of Appeal in *Ang Seng Wan* made no decision that the non-finding of guilt had vitiated the dismissal, I am not prepared to extend the law to that extent. Merely not recording a finding of guilt does not mean that the entire decision making process is flawed.

B I therefore granted an order in terms of prayers (i), (ii), (iii) and (iv).

Plaintiff's claim allowed.

Reported by D Sivalingam

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